

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In re Amendment of Section 73.202(b))	
of the Commission's Rules,)	MM Docket No. 02-73
Table of Allotments)	RM-10400
FM Broadcast Stations)	
(Cameron, Arizona))	

To: Assistant Chief, Audio Division, Office of Broadcast License Policy, Media Bureau

REPLY COMMENTS

Farmworker Educational Radio Network, Inc. ("FERNI"), the licensee of radio station KRIT (FM) on Channel 230 in Parker, Arizona, hereby submits its Reply Comments to the counterproposals in the above-referenced proceeding, pursuant to the Commission's Public Notice of July 9, 2003 (Report No. 2613).

FERNI has standing to file these Reply Comments. On July 15, 2002, FERNI filed with the Commission a Petition for Rulemaking to substitute Channel 252B1 for Channel 230C3 in Parker, Arizona. In the counterproposal filed by Arizona Radio Partners ("ARP") on June 4, 2002, in this proceeding, one of the proposals is in apparent conflict with the Petition for Rulemaking filed by FERNI on July 15, 2002. Although, as will be shown below, there is no real conflict between the counterproposal and FERNI's Petition for Rulemaking, the Staff has apparently treated the FERNI Petition for Rulemaking as being in conflict with the pending proposal, and hence has taken no action on FERNI's Petition for over one year.

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FERNI's purpose in filing these Reply Comments is to point out to the Commission that the substitution of Channel 252C3 for vacant allotment Channel 247C3 at Parker, Arizona, was a contingent proposal that would be unnecessary in the event that the then-pending assignment of Channel 247 to Parker, Arizona, became final. Since the assignment of Channel 247 to Parker became final on July 8, 2002, the substitution of Channel 252 for Channel 247 is an unnecessary component of the global resolution advanced by the parties in the proceeding above. The need for the substitution for Channel 247 in Parker in the above-referenced proceeding was specifically conditioned by the proponent on the finality of the assignment of Channel 247 to Parker, a condition which had been met prior to the filing of the FERNI Petition for Rulemaking. FERNI's Petition should be separated from this proceeding, the contingent request in this proceeding to substitute Channel 252 for Channel 247 should be disregarded pursuant to the request of the proponent, and the FERNI Petition for Rulemaking processed.

It should be noted that although the proposals treated as counterproposals in Docket number 02-73 were filed on May 22, 2002, and on June 4, 2002, Public Notice of the filing was not given. Accordingly, FERNI had no knowledge that the Commission staff would consider that ARP's contingent proposal was still a viable counterproposal.

On June 4, 2002, ARP and NPR Phoenix filed Joint Counterproposals in the above-referenced proceeding that were represented to be a global resolution to reconcile the conflicting proposals in the proceeding. In that filing, with regard to Parker, Arizona, the parties state as follows:

In the Parker proceeding, the FCC faced two conflict counterproposals: (a) the allotment of Channel 247C3 to Parker, with a reference point in Arizona (which is in Zone II); and (b) the allotment of Channel 248B1 to Parker, with a reference point in California (Zone I-B). In the Parker Report and Order, the FCC allotted

Channel 247C3 to Parker with a reference point in Arizona, effective July 8, 2002. Neither ARP's original Counterproposal nor the ARP Component of the Global Resolution advanced in these Joint Reply Comments conflicts with the allotment of Channel 247C3 to Parker as set forth in the Parker Report and Order. To moot any potential spacing conflict between the Parker allotment and the ARP component of these Joint Reply Comments, the parties suggest the substitution of Channel 252C3 (or Channel 252B1) for Channel 247C3 at Parker. The Commission can allot Channel 252B1 to Parker using the reference point suggested by the proponent of Channel 248B1 at Parker, or the Commission can allot Channel 252C3 to Parker using the reference point employed by the Parker Report and Order. If the allotment of Channel 247C3 to Parker soon becomes final, however, there will be no need for a channel substitution at Parker in this proceeding. [Joint Reply Comments, Arizona Radio Partners, LLC, and NPR Phoenix LLC, page 9, footnote 16]

FERNI, seeking to separate itself from pending proceedings, did not file a Petition for Reconsideration of the denial of its request to assign Channel 248 to Parker (see Docket 01-69). Instead, FERNI, waiting until the assignment of Channel 247 to Parker became final, then filed on July 15, 2002, its Petition for Rulemaking to substitute Channel 252 for Channel 230 in Parker.

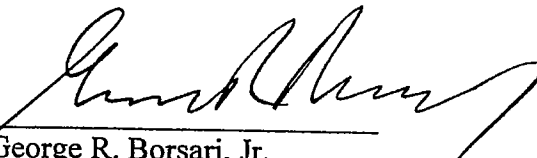
Separate and apart from any consideration of the FERNI Petition for Rulemaking, or the finality of Channel 247, the Commission should not consider the Arizona Radio Partners proposal to substitute Channel 252 for 247. It is by the petitioner's own proposal, contingent on the filing of a Petition for Reconsideration in another proceeding. As the Commission stated, "[W]e will no longer entertain optional or alternative proposals presented in either an initial petition for rule making or in a counter proposal [Winslow, Camp Verde, Mayer and Sun City, Arizona, 16 FCC Rcd at 9554, 9555]." The Staff policy grew from its decision in Oxford and New Albany, Mississippi, 3 FCC Rcd 615(1988) that the Commission would not entertain contingent proposals.

The counterproposal by Arizona Radio Partners to substitute Channel 252C3 for vacant allotment Channel 247C3 at Parker, Arizona, should be deleted from

consideration in the above-referenced proceeding because it is, according to the proponent's own statements, unnecessary for a global resolution in the above-referenced case, and because it was a contingent proposal which the Commission, as a matter of announced policy, does not consider. FERNI further requests that the Commission staff, on an expedited basis, issue a Public Notice deleting as a matter for consideration the Parker counterproposal in the above-referenced proceeding so that the FERNI rulemaking, now pending for over one year, can proceed.

Respectfully Submitted,

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